IN THE

# United States Court of Appeals

For the Ninth Circuit

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## Nos. 21310, 21313, 21314

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California Gas Producers Association, Independent Oil and Gas Producers of California, Jade Oil and Gas Company, State of Texas, Texas Independent Producers and Royalty Owners Association, West Central Texas Oil and Gas Association and Permian Basin Petroleum Association, *Petitioners,*

v.

Federal Power Commission, *Respondent.*

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# BRIEF AMICUS CURIAE
# OF
# INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

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## BRIEF AMICUS CURIAE

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### INTEREST OF AMICUS CURIAE

The Independent Petroleum Association of America (IPAA), in filing this Amicus Curiae Brief in support of Petitioners herein, sets forth that it is a non-profit organization, incorporated under the laws of the State of Oklahoma and is a national trade association representing independent oil and natural gas producers.

The membership of IPAA consists of some 5,000 individuals, partnerships and corporations who are engaged in all branches of the oil and natural gas producing industry with membership in every oil and natural gas producing area in the United States, including the areas that produce and furnish natural gas, from sources within the United States, to California.

## INTRODUCTORY STATEMENT[1]

This case is important to the future health and strength of the domestic oil and natural gas producing industry.

The volumes of imports of natural gas from Canada which were approved by Respondent herein are of such a magnitude that they will have a depressant effect upon the exploration for and development of domestic natural gas and oil reserves, and the use of domestic natural gas and oil in the State of California.

Increasing imports of natural gas adversely affect the domestic oil and natural gas producing industry in several ways as follows:

1. Supplant the production of domestic gas.
2. Create additional natural gas liquids production which naturally seeks a market in the United States.
3. Supplant the market for domestic liquid petroleum products.
4. Restrict the accumulation of capital funds by domestic producers and discourage the reinvestment of such funds for use in the search for additional domestic oil and gas reserves.

The production of natural gas and the production of liquid petroleum are two branches of one industry and the

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[1] The Statement of the case is set forth in the briefs of the parties and is not duplicated here.

activities of each are inseparable. That which adversely affects one also adversely affects the other. Thus increasing imports of natural gas are having a growing adverse effect on the over-all domestic oil and natural gas producing industry.

IPAA is not opposed to natural gas imports per se. It is our position that natural gas imports, as will be developed further later herein, should be permitted to increase but at a percentage growth rate no greater than the growth rate of domestic production of natural gas.

## ARGUMENT

### I. Respondent Erred in Finding That the Additional Imports of Natural Gas Herein Were Appropriate and Consistent With the Public Interest

Section 3[2] of the Natural Gas Act authorizes the Federal Power Commission to permit the importation of natural gas only when such imports will be "consistent with the public interest."

In making its public interest determination with respect to natural gas imports, Respondent must address itself to the following questions:

1. Is it in the public interest to have an important consuming area in the United States, such as is involved herein, became overly dependent on foreign gas for its required supply?

2. Is it in the public interest for Respondent, by its actions herein, to subject U. S. consumers to the jurisdiction of a foreign country for their supply of natural gas and the price which these consumers will have to pay for such gas?

3. Is it in the public interest for Respondent to authorize increasing imports of natural gas to absorb the market

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[2] 15 U.S.C.A., Section 717b.

otherwise served by domestically produced oil and gas and thus deprive the United States producer of the needed funds to explore for and develop much needed new petroleum reserves?

With respect to question number 1, concerning the matter of dependence on foreign gas, this record discloses that with approval of the import application sought herein the Pacific Gas and Electric's gas supply from Canadian sources for use in the San Francisco area, will in 1968 amount to approximately 30 percent. (R-2392)

Respondent has recognized in a previous case that becoming overly dependent upon foreign sources for a natural gas supply is a real problem that must be dealt with. In Northwest Natural Gas Company,[3] Respondent in referring to the granting of a gas import application under Section 3 of the Act, stated that:

> ". . . the Commission must not fail to give the fullest possible protection to all prospective consumers."

In that case, Respondent further stated:

> "Such protection would not be afforded to any segment of the American people if its sole source of essential natural gas were through importation from a foreign country without some intergovernmental agreement assuring the continued adequacy of its supply. Otherwise, all control over the production, allocation, and transportation to our border of such natural gas would be in the hands of agencies of foreign governments, whose primary interest would of necessity always be in the needs and advantages of their own people, and whose judgments and actions would be essentially dependent upon public opinion within that country, rather than upon the interests of American consumers. Regardless of any long and cherished friendly relations with any neighbor nation able to supply such area with natural gas, it would not be in the public interest to

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[3] 13 FPC 221, 235 (1954).

> permit the importation of its gas as the sole source for the consumers in need of an uninterruptible supply at a reasonable price, which should always be assured by this Commisison to the full extent of its powers.''

It is true that in the ''Northwest'' case the Commission referred to ''sole'' source of supply. However, it is submitted that having a 30 percent dependency is treading on very thin ice. If Pacific Gas and Electric were to lose 30 percent of its natural gas supply for any reasons cited by Respondent in the Northwest case, it would be a catastrophe, especially in times of national emergency.

In considering what could happen to a supply of gas not within the jurisdiction of Respondent or other U. S. governmental agencies, it must be recognized that because of its priority responsibility to its own citizens, the Canadian Government may have to assert its jurisdiction over its natural gas industry and interrupt or reduce the export of gas to the United States or impose other pricing or intolerable conditions on such exports.

In this regard, this Honorable Court is requested to take Judicial notice of a ''Notice of Certification and Order to Show Cause,'' issued on September 13, 1966, by the Presiding Examiner in the ''Great Lakes Gas Transmission Company, et al.,'' now pending before Respondent.

In that Order, the Examiner stated in part:

> ''On August 29, 1966, according to various newspaper reports, the Canadian government, by action of its Privy Council dated August 25, 1966, rejected the recommendation of its National Energy Board and indicated its refusal to approve construction of the proposed projects through the United States, stating in pertinent part:
>
> > 'The Government does not believe it to be in Canada's best interest that the future development of facilities for bringing western Canadian gas to its eastern Canadian markets should be located outside Cana-

> > dian jurisdiction, and subject to detailed regulation under laws of the United States which are naturally designed to protect interests of United States citizens.'
>
> "In these circumstances, it appears that any further proceedings herein are moot and that the pending applications, all of which require export authorization from the Canadian government, should be dismissed without prejudice."

It is submitted that herein Respondent failed to recognize that becoming too dependent (30 percent of supply) on Canada for a long-term is not in the public interest.

We should not lose sight of the fact that imports of natural gas from Canada, once approved by Respondent, are beyond the jurisdiction of Respondent.

Further, the provisions of the Natural Gas Act, which in the case of domestic natural gas producers, assure continuation of service once commenced, are not applicable to Canadian natural gas producers.

As to question number 2, concerning jurisdiction over prices to the U. S. consumer, it is submitted that here also Respondent, once it approves an import application, is powerless to regulate the price to be charged U. S. consumers for Canadian gas.

The record herein discloses that most of the contracts supporting the gas supply herein involved are open-ended containing indefinite pricing clauses etc. and there is no way of telling what price increases will be thrust upon the U. S. consumers herein concerned. (R-1346)

Rightly or wrongly, Respondent has outlawed such indefinite pricing provisions with respect to U. S. producers of natural gas. Yet Respondent has approved imports of natural gas supported by contracts containing open-ended indefinite pricing provisions. It is submitted that this is patently unfair and not in the public interest.

With respect to question number 3 concerning the supplanting by natural gas imports of domestic oil and gas production, it must be recognized that income thus denied U. S. producers depresses the search for and development of vitally needed new petroleum reserves for future use.

As to this, Witness Jordan testified that if natural gas imports were permitted to increase disproportionately in relation to the growth of the domestic gas producing industry, "the effect on the health and vigor of the domestic petroleum industry, both gas and oil, would be substantial and adverse." (R. 1588) He further declared that ". . . to the extent that imports of gas back out or reduce interstate shipments, (of natural gas) some wells that would have been drilled will not be drilled."

Witness Jordan was asked if there was any relationship between the oil and gas producing branches of the petroleum industry. His answer:

> "Yes. The two industry activities are intimately related both physically and economically. They are in fact two segments of one industry, namely the petroleum producing industry. The two segments are inseparable. They cannot practically be separated and treated one from the other. What adversely affects one also adversely affects the other." (R. 1581)

Thus Canadian gas imports, which adversely affect one branch adversely affect both.

In this connection, this Honorable Court is requested to take Judicial notice, with respect to the condition of the oil and gas producing industry, of an official report of the Department of the Interior which was published in January 1965, entitled "An Appraisal of the Petroleum Industry of the United States." At page 17, the report states:

> "Whatever the reasons that operated on the drilling policy of the industry, total wells drilled have gone from 58,200 in 1956 to 43,600 in 1963, a reduction of 25 percent. Concurrently, expenditures for drilling and

> equipping wells fell from $3,067 million to $2,577 million, a decline of about 15 percent. While the greatest caution should be used to avoid any direct cause-and-effect relationship between drilling effort and contemporary additions to proved reserves there is, nevertheless, some significance in the fact that such additions to proved reserves of crude oil as computed by the American Petroleum Institute declined from a 5-year average of 3.2 billion barrels per year in the early 1950's to 2.6 billion barrels for the period 1958-63. The reserves added by new discoveries (as opposed to revisions and extensions) meanwhile declined from a five-year average of 585 million barrels per year to 340 million.
>
> "The effect of these declines has been to slow the growth of proved reserves of crude oil almost to a halt. Between 1950 and 1956 total year-end reserves increased by 5 billion barrels. In the succeeding six-year period (1956-1962) reserves increased by less than one billion, and in four out of the past seven years additions to reserves have been less than withdrawals for use. However, additions to reserves of natural gas liquids and condensate were greater than annual production and thus helped cushion the decline in the ratio of proved reserves of total liquid hydrocarbons to production. This is no cause for immediate alarm, but it does indicate that what has been done since 1956 to find new supplies of oil, whether through new discoveries or through increasing recovery rates of old deposits, has not been enough to provide a sound basis for future growth. Additional exploration effort is needed, particularly in new field wildcat drilling. Capacity remains excessive, however, and there is no need for its expansion."

This Department of the Interior report further states at page 19:

> "The constantly rising demand for natural gas forecast through 1980 raises the question of adequacy of gas reserves to meet this demand."

The report then proceeds to tabulate the natural gas reserve position during the past 17 years, listing new gas reserves found aggregating 284 trillion cubic feet during this period. The required volume of natural gas reserves to be found during the next 17 years (1964-80) according to the report would total 584 trillion cubic feet, or more than double the volumes found in the preceding similar time period, in order to maintain the reserve to production ratio of 20:1.

The report then states as follows:

> "The Geological Survey has estimated that with the additional 2 billion feet of total exploratory drilling mentioned earlier in this report, 4,000 trillion cubic feet of natural gas also will be discovered; of this total, 80% or 3,200 trillion cubic feet will be economically recoverable. Thus, it appears that domestic natural gas resources will be adequate to meet requirements during the 1964-80 period; *providing that the necessary amount of exploratory effort is forthcoming."* (Emphasis added)

This official study by the Department of the Interior shows: (1) there is a great need for increased domestic exploration for and development of both oil and natural gas reserves, and (2) adequate domestic resources can be made available if the necessary funds and incentives are provided. It confirms the evidence of record, referred to above, which shows that the additional imports authorized by Respondent will have a depressant effect upon domestic exploration for and development of both oil and gas and, therefore, would be inconsistent with the public interest.

## II. Respondent Erred in Not Recognizing That an Alternate Fuel Supply Is Available for Use By PG&E

The record in these cases shows (R. 1580) that PG&E steam plants that use natural gas are all equipped to use residual fuel oil. This record also shows (R. 1580) that there is an over-supply of residual fuel oil readily available in California. In fact, in 1964, 42,000 barrels of fuel per day were exported overseas from California; and an additional 19,000 barrels per day were shipped to the U. S. East Coast from California.

This 61,000 barrels of residual fuel oil per day is equal on a Btu equivalent to about 370,000 Mcf of gas per day, which is more than enough to meet the 200,000 Mcf of natural gas imports per day which was authorized by Respondent in this application.

Thus the record shows that PG&E can use residual fuel under its boilers, and that residual fuel is readily available. Consideration of the availability of alternate fuels is an indispensable element in the proper measuring and determination of the "public interest." Yet Respondent chose to ignore this fact and in so doing committed error.

It is thus urged that in considering the basic issues in this review, this Honorable Court recognize that, aside from the availability of adequate natural gas from domestic sources, there is adequate residual fuel oil available at economic prices for use by PG&E.

Thus Respondent did not act in the public interest in approving the applications herein for large additional volumes of natural gas from Canada.

### III. Respondent Erred in Not Adopting a Policy Whereby Canadian Natural Gas Imports Would Grow at the Same Rate as the Growth Rate of Domestic Production of Natural Gas

As set forth earlier herein, IPAA does not oppose outright natural gas imports from Canada.

IPAA's recommended policy approach to Respondent was that it adopt a reasonable solution concerning natural gas imports as outlined in the record herein by Witness Jordan as follows:

> "The IPAA has been concerned about the matter of the impact of natural gas imports for many years and has given it continuing and close study since 1960 and a policy covering this subject was adopted in May 1965

> which in essence is that imports should be permitted to increase but at a rate no greater than the growth rate of domestic production of natural gas.
>
> "Q. Under this policy, what growth in imports of natural gas would be permitted?
>
> "A. U. S. production of natural gas has increased about 5 percent for each of the last five years. Using a similar growth factor for natural gas imports would permit imports to grow about 60,000 Mcf per day per year." (R. 1587)

In failing to adopt such a policy recommendation, it is submitted that Respondent did not act in the public interest.

## CONCLUSION

Respondent in its Opinion 495 hereunder review erred in many other respects which IPAA has not touched upon in order not to duplicate the arguments presented to the Court by the petitioners herein.

For the reasons developed in this Brief as Amicus Curiae, IPAA respectfully requests this Honorable Court to declare Respondent's Opinion 495 to be unreasonable, arbitrary and illegal, and that its order be permanently stayed.

Respectfully submitted,

Independent Petroleum
Association of America

L. Dan Jones,
*General Counsel*

By /s/ William I. Powell
William I. Powell,
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Dated at
Washington, D.C.

December 12, 1966

IN THE
UNITED STATES COURT CF APPEALS
FOR THE NINTH CIRCUIT

Nos. 21310, 21313, 21314

CALIFORNIA GAS PRODUCERS ASSOCIATION, INDEPENDENT OIL AND GAS PRODUCERS OF CALIFORNIA, JADE OIL AND GAS COMPANY, STATE OF TEXAS, TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION, WEST CENTRAL TEXAS OIL AND GAS ASSOCIATION AND PERMIAN BASIN PETROLEUM ASSOCIATION, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

BRIEF AMICUS CURIAE
OF
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

## CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ WILLIAM I. POWELL

WILLIAM I. POWELL, Attorney

1110 Ring Building
Washington, D. C. 20036

Dated at
Washington, D. C.

December 9, 1966

## CERTIFICATE OF SERVICE

Pursuant to the Rules of the United States Court of Appeals for the Ninth Circuit, I hereby certify that I have this date served the foregoing Brief Amicus Curiae upon the following Petitioners, Respondent, and the other parties admitted to participate in the proceedings below before the Commission.

| Petitioners | Attorney(s) Served |
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| Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association<br>(Case No. 21314) | John Davenport, Esq.<br>902 International Life Building<br>Austin, Texas |
| California Gas Producers Association, Independent Oil and Gas Producers of California, and Jade Oil and Gas Company<br>(Case No. 21310) | Henry F. Lippitt, 2nd Esq.<br>626 Wilshire Boulevard<br>Los Angeles, California 90017 |

| Respondent | |
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Dated at Washington, D. C., this ninth day of December, 1966.

/s/ WILLIAM I. POWELL

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